THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION Nos.10933 & 10934 OF 2006

W.P.No. 10933/06:

Between:

Dasari Narayana Rao
S/o Sai Raju, Jubilee Hills, Hyderabad

… Petitioner

And:

The Deputy Collector and Mandal Revenue Officer,
Serilingampalli, RR District and others.

… Respondents

W.P.No. 10934/06:

Between:
Smt. Hemalaya Kumari
Jubilee Hills, Hyderabad

… Petitioner

And:

The Deputy Collector and Mandal Revenue Officer,
Serilingampalli, RR District and others.

… Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION Nos.10933 & 10934 OF 2006

COMMON ORAL ORDER :

The petitioners are the father and the daughter. The 1st respondent's order dated 16.5.2002 is challenged. This order is affirmed in the appellate order of the 2nd respondent dated 28.10.2002. The revision there against was dismissed by the 3rd respondent's order dated 27.9.2003 and thereafter by the 4th respondent's order dated 16.6.2005. The facts and the legal position involved being similar to the two writ petitions, the facts in W.P.No. 10933 of 2006 are recorded for analysis.

The 1st respondent issued a brief and laconic show cause notice dated 16.2.2002. It reads as under:

" Whereas you are found to have assigned lands specified in the scheduled below, in contravention of the provisions of sub section (2) of section 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977.

You are hereby directed to show cause within (15) days fifteen days of receipt of this notice as to why you should not be summarily evicted from the said land and as to why any crop or their product raised on the land/lands and any building or other construction erected or nay thing deposited there on should not be forfeited.

Village	Sy. No. Sub-Div No.	Description of land	Entire extent	Occupant extent	Nature of Occupation
Nanakram Guda	115/29	Govt. Assigned land	5-00	5-00	Assignee/ Purchaser/ Plot owner/ interested person

Sd/ "

By the order dated 16.5.2002 the 1st respondent concluded that the petitioner is in possession of assigned lands sold by the original assignee to the petitioner by a registered sale deed, in violation of the conditions of assignment (as to prohibition of

alienation); that the sale deed is void in view of Sec.3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act (hereinafter 'the 1977 Act'); ordered resumption of the land of Ac.5.00 to the custody of the Government and directed the petitioner's eviction, with a further direction to the Additional Revenue Inspector to take over possession from the petitioner.

The petitioner preferred an appeal to the 2nd respondent. By the order dated 28.10.2002 the 2nd respondent reiterated the conclusions of the 1st respondent and dismissed the appeal.

The petitioner then preferred a revision to the 3rd respondent, who by the order dated 27.9.2003 rejected the revision.

The petitioner preferred a further revision to the 4th respondent, who by the order dated 16.6.2005 dismissed the revision and confirmed the orders of the respondents 1 to 3.

The petitioner is thus before this court seeking Certiorari of the orders of the 1st respondent as confirmed by the respondents 2 to 4.

Facts :-

The petitioner purchased Ac.5.0 in Sy.No. 115/15 (Old 115/16), Nanakramguda village, Serilingampalli Mandal under a registered sale deed dated 21.9.1995 from one B. Mahadoba. The other petitioner, the daughter, similarly purchased Ac.5.0 in Sy.No. 115/29 under a registered sale deed dated 21.12.2005 from Ganga Bai and others. These are the undisputed facts.

In response to the show cause notice the petitioner submitted his explanation asserting:

i) That the notice dated 16.2.2002 is vague;

ii) That the Government had issued a patta certificate under the Laoni Rules, 1950 (for short "the 1950 Rules") in respect of Sy. Nos. 115/16, 115/29 along with 16 others at Nanakramguda village without any condition of prohibition of alienation and as per the patta certificates the said lands are alienable;

iii) That the petitioner (having purchased the shares of the original assignees under a lawfully and duly executed registered sale deed for valuable consideration), is a bona fide purchaser from the lawful owner, in lawful possession of the property and is also paying land revenue to the Government apart from being in enjoyment and exclusive possession of the property uninterrupted for long years;

iv) That the provisions of the 1977 Act have no application as the land in question is not an "assigned land" within the meaning of the expression in the 1977 Act; and

v) That the notice and initiation of proceedings under the 1977 Act is "illegal, void and without jurisdiction" and "continuation of the proceedings by your office is without jurisdiction, illegal and abuse of process of law."

According to the petitioner, his vendor purchased the land in a public auction conducted under Rule 9 of the 1950 Rules. It is the petitioner's consistent claim that no condition of prohibition of alienation of the land is incorporated in the assignment deed in favour of his vendor. On this assertion the petitioner contends that the land in question is not "assigned land" within the meaning of the said expression as defined in the 1977 Act. Therefore, contends the petitioner, the respondents have no jurisdiction to initiate proceedings under the 1977 act.

In the light of the petitioner's categorical assertions above, it was incumbent on the respondents to record a conclusion that the land in question was an assigned land within the meaning of the expression as defined in the 1977 Act. Such a conclusion on a jurisdictional fact is a condition precedent for exercise of jurisdiction under the 1977 Act. As the respondents are Tribunals of a limited jurisdiction, their jurisdiction is defined by the existence of the jurisdictional fact viz., alienation of assigned land which is declared void under the provisions of the 1977 Act.

As we have noticed, the show cause notice dated 16.2.2002 is wholly laconic and hopelessly devoid of any factual assertions which would enable a rational response by the petitioners. The show cause notice does not state who the original assignee is; does not specify the date of the deed of assignment; does not assert that the deed of assignment incorporated a clause prohibiting alienation, with or without a condition and that therefore the petitioners' possession of the land under a registered sale deed executed by such original assignee is illegal as the sale itself is void under the provisions of the 1977 Act.

The 1st respondent was required, as the primary authority to have first dealt with, adjudicated and then recorded a finding on the existence of the jurisdictional fact (of the land in question being 'assigned land'). Such conclusion was required to be arrived at by the 1st respondent on the basis of credible and preponderating oral or documentary evidence. In any event since the assignment was not subsequent to the coming into force of the 1977 Act but presumably prior thereto, the 1st respondent was required to first conclude that the land was 'assigned land' as defined in the 1977 Act before proceeding to adjudicate whether there was a transgression of the provisions of Sec.3 of the 1977 Act.

In this writ petition, this court is exclusively and narrowly required to determine whether the order of the 1st respondent is in conformity with the minimal forensic discipline of lawfully recording a correct conclusion on a jurisdictional fact. If the answer to this issue be in the negative, then the whole edifice of the 1st respondent's order suffers a fatal infirmity and the orders of the respondents 2 to 4, appellate and revisional in character, would perish with it, as the very foundation of their appellate and revisional jurisdiction would perish with the incurable infirmity of the primary order.

Sec.4 of the 1977 Act empowers the District Collector or any

other Officer not below the rank of a Mandal Revenue Officer, authorized by him in this behalf, if satisfied that the provisions of Sec.3(1) have been contravened in respect of any assigned land, to take possession of the assigned land after evicting the person in possession; and to restore the assigned land to the original assignee or his legal heir……." Sec.4(3) enacts a presumption of a contravention of the provisions of Sec.3(1),when an assigned land is in possession of person other than a original assignee. Sec.4-A(1) provides an appellate remedy to a person aggrieved by an order passed under Sec.4(1); and a further appellate remedy to the District Collector [Sec. 4-A(2)] and Sec.4-B provides a revisional remedy to the State government.

As is apparent from the text and context of the provisions of the 1977 Act, in particular the provisions of Sec.4, 4-A and 4-B, the Mandal Revenue Officer, the Revenue Divisional Officer, the Collector or the State Government as the case may be, as primary, appellate or revisional authorities are statutory Tribunals of a limited jurisdiction. They are created by and under the Act subject to specified limitation on their powers and jurisdiction. Their powers are limited and conditioned by the limits specified by the Act. These Tribunals therefore cannot arrogate to themselves jurisdiction, by a wrong decision on the facts or a wrong conclusion as to the conditions upon which their jurisdiction depends, according to the terms and conditions of the statute.

In ***Vatticherukuri Village Panchayat Vs. Nori V.Deekshithulu***[1] the Supreme Court explained the principle:-

> "23. The jurisdiction of a tribunal created under statute may depend upon the fulfillment of some condition precedent or upon existence of some particular fact. Such a fact is collateral to the actual matter which the tribunal has to try and the determination whether it existed or not is logically temporary prior to the determination of the actual question which the tribunal has to consider. At the inception of an enquiry by a tribunal of limited jurisdiction, when a challenge is made to its jurisdiction, the tribunal has to consider as the

collateral fact whether it would act or not and for that purpose to arrive at some decision as to whether it has jurisdiction or not. There may be tribunal which by virtue of the law constituting it has the power to determine finally, even the preliminary facts on which the further exercise of its jurisdiction depends; but subject to that, the tribunal cannot by a wrong decision with regard to collateral fact, give itself a jurisdiction which it would not otherwise have had."

Much earlier, a Constitution Bench of the Supreme Court in ***T.C.Basappa Vs. T.Nagappa***[2]***,*** while dealing with the scope of a writ of Certiorari approved the principle evolved in ***Bunbury Vs. Fuller***[3]***; and R Vs. Income Tax Special Purposes Commissioners***[4] and held that when the jurisdiction of the Court depends upon the existence of some collateral fact, the Court cannot by a wrong decision of the fact give itself jurisdiction which it would not otherwise possess.

In the light of the above principles as to the jurisdictional limits of a Tribunal of limited jurisdiction, it is clear that a correct conclusion as to the land in the possession of the petitioners being "assigned land" (as this expression is defined in Sec.2(1) of the 1977 Act); and the such conclusion arrived at on the basis of the evidence on record; such evidence having been recorded after due opportunity to the aggrieved petitioners, is a condition precedent to the exercise of power under Sec.4(1) of the Act.

In view of the skeletal show cause notice issued by the 1st respondent dated 16.2.2002 and in the context of the petitioner's clear assertion that there was no condition prohibiting alienation in the assignment order in favour of his vendor, this court is required to consider whether the 1st respondent's order dated 16.5.2002 declaring the sale in favour of the petitioner void under the provisions of the 1977 Act, is valid.

According to the order dated 16.5.2002 : (i) As per the Khasra Pahani (1954-55) of Nanakramguda village, the land in an

extent of Ac.273.12 gts, in Sy.No. 115 is classified as poramboke sarkari; (ii) the pattadar column of the Pahani upto 1977-78 records the land as belonging to the Government; and (iii) in 1978-79 the names of Mahadoba in an extent of Ac.5.00 in Sy.No. 115/16 and the name of Udayman Singh in an extent of Ac.5.00 in Sy.No.115/29 were recorded along with others (in respect of other Sy.Nos) through Faisal Patti for 1977-78 as the supplementary sethwar.

The order dated 16.5.2002 all of a sudden records a conclusion that Mahadoba is an assignee of Government land in Sy.No. 115/16 and Smt. Chagabai w/o Udayaman Singh and the sons of late Udayaman Singh are assignees of Government land in Sy.No.115/29; and these persons sold the lands assigned to them in favour of the petitioners by registered sale deeds dated 21.9.1995 and 21.12.1995 respectively, in contravention of the provisions of Sec.3 (2) of the 1977 Act. This conclusion is based neither on evidence nor a logical correlation of facts on record.

The order dated 16.5.2002 states that under the 1950 Rules as well as under the revised policy published in 1958, alienation of assigned lands was prohibited. While under the 1950 Rules alienation or transfer without the previous sanction of the District Collector was prohibited, under the revised 1958 policy assigned lands were heritable but could not transferred. According to the 1st respondent, this court in judgment dated 21.11.2001 in WA No. 1514 of 2001 had held that a original certificate issued by the Tahsildar in Form-G contained a condition that the respondent is not empowered to transfer the occupancy without the previous sanction of the Taluqdar (Collector). The order dated 16.5.2002 also states that since neither of the petitioners had applied to the District Collector for permission or sanction for purchasing the lands and the District Collector did not pass any orders under the 1950 Rules, the possession and occupation of the petitioners pursuant to their purchase of the lands under the registered sale deeds was

illegal, the sale itself void under the provisions of Sec.3(2) of the 1977 Act and therefore the land should be resumed in favour of the Government and they should be evicted.

In the considered view of this court the show cause notice dated 16.2.2002 is itself invalid. The minimum requirement of a show cause notice, in the context of an action initiated under the provisions of the 1977 Act is (a) it should assert that there was an assignment of land either under the provisions of the 1977 Act or under any Rules for the time being in force subject to a condition of non-alienation; that such "assigned land" was transferred by such assignee in contravention of the prohibition of alienation clause contained in the deed of assignment; (b) it should assert that the respondent's to the show cause notice had entered upon possession of "assigned land" under a deed of transfer which is invalid under the provisions of Sec.3 of the 1977 Act. The show cause notice must of necessity contain such factual assertions to enable the recipient (of the notice) to rationally respond and submit his objections, if any, to the proceedings initiated against him under the provisions of the 1977 Act. Issuance of a show cause notice is not an empty ritual. It should provide a reasonable and fair opportunity to the recipient of the show cause notice to defend his title and possession of, the valuable right to property.

Without stating any facts whatsoever in the show cause notice dated 16.2.2002 the 1st respondent in the order dated 16.5.2002, spelt out an elaborate factual matrix i.e., the classification of the land in the Khasra Pahanis (1954-55); recording of the names of Mahadoba and Udayaman Singh in the Faisal Patti in 1977-78 and in the supplementary sethwar. These facts were not put to the petitioners nor their response elicited on these. These facts were gathered by the 1st respondent without the knowledge of the petitioner, behind his back and without giving the petitioners an opportunity to deny or rebut this factual assertion.

There is another infirmity, a fatal infirmity, in the order of the

1st respondent dated 16.5.2002. The 1st respondent concludes that the vendors of the petitioners were assignees of Government land who had sold the assigned lands in favour of the petitioners under a registered sale deed and in contravention of the provisions of Sec.3(2) of the 1977 Act. There is no basis for this *ipsi dixit* , neither in evidence nor in logic and reason.

Sec.3 of the 1977 Act reads as under:

" **3. Prohibition of transfer of assigned lands** :- (1) Where before or after the commencement of this Act any land has been assigned by the Government to a landless poor person for purposes of cultivation or as a house-site then, notwithstanding anything to the contrary in any other law for the time being in force on in the deed to transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.

(2) No landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise.

(3) Any transfer or acquisition made in contravention of the provisions of sub-section (1) or sub-section (2) shall be deemed to be null and void.

(4) The provisions of this section shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a civil court or of any award or order of any other authority.

(5) Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house-site on the date of such commencement."

Sec. 4(3) enacts that where any assigned land is in possession of a person, other than the original assignee or his legal heir, it shall be presumed, until the contrary is proved, that there is a contravention of the provisions of sub-section (1) of Section 3.

It therefore requires to be considered what the expression "assigned land" means. Sec.2(1) of the 1977 Act defines "assigned land" to mean *"lands assigned by the Government to the landless poor persons under the rules for the time being in force, subject to the condition of non-alienation and includes lands allotted or transferred to landless poor persons under the relevant law for the*

time being in force relating to land ceilings; and the word assigned shall be construed accordingly". The explanation to Sec.2(1) is to the effect that a mortgage in favour of the specified institutions shall not be regarded as an alienation. We are not concerned in this case with the explanation, as this would not be applicable to the case.

In view of the definition of the expression "assigned land" in Sec.2(1) of the 1977 Act, lands assigned by the Government to landless poor persons under any rules for the time being in force, which are assigned subject to a condition of non-alienation, are assigned lands. Thus lands assigned under the 1950 Rules would be "assigned land" within the meaning of the expression under the 1977 Act, **if and only if** the land is assigned with a condition in the deed of assignment prohibiting its alienation. (emphasis added)

In ***Nimmagadda Rama Devi v District Collector, Machilipatnam and Anr. ([5]),*** a Division Bench of this court held, on an analysis of the provisions of the 1977 Act, that only if there is a condition of non-alienation while assigning the lands or the land is assigned under the provisions of the AP Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, it would be "assigned land" within the meaning of the 1977 Act; where the assignment is without any such condition as to non-alienation, it would not be "assigned land" under the 1977 Act and the said Act has no applicability. When such is the position, the authorities under the Act have no jurisdiction to deal with the lands under the provisions of the 1977 Act, held the Division Bench.

In ***G.V.K.Rama Rao and Anr. V Bakelite Hylam Employees Co-op. House Building Society, Hyderabad ([6]),*** this court was considering a fact situation where land was assigned on 4.1.1953 under the 1950 Rules. In 1953 there was no condition of non-alienability in the assignment. The condition of non-alienability was seen to have been incorporated in the 1950 Rules by the revised

assignment policy issued in G.O. Ms. No. 1406 Revenue, dated 25.7.1958. Under this G.O. the provisions relating to assignment of Government land in Andhra and Telengana regions of the State were integrated. On this analysis and conclusion as to the position of the 1950 Rules, the learned single Judge of this court held that since there was no prohibition of alienation in the assignment in 1953 the land would not constitute "assigned land" within the meaning of the expression under the 1977 Act and therefore sale of such land is not hit by the provisions of the 1977 Act.

In ***Rambagh Satyanarayana and others v Joint Collector, R.R. District, Hyderabad and others*** ([7]), this court reiterated that the prohibition u/Sec. 3 of the 1977 Act comes into operation only in case where the land is assigned subject to the condition of non-alienation.

Again in ***Shyam Sunder v Government of A.P and others*** ([8]) this court recorded that in the Laoni Rules 1357 Fasli as well as the subsequent Rules (the 1950 Rules) there was no condition of non-alienability, till G.O. Ms. No. 1406 dated 25.7.1958 was issued. This court clearly held that in considering whether a transfer is hit by the provisions of the 1977 Act, the relevant fact is whether the transfer is of a land which has been assigned by the Government with a condition of non-alienability incorporated in the deed of assignment. On an analysis of the evolution of the Rules with regard to alienation this court observed that neither under the 1357-F Rules nor the 1950 Rules was there a condition of non-alienability. Having identified this lacuna, the Government issued comprehensive rules in 195 in G.O. Ms. No. 1406 in supersession of the earlier Rules relating to assignment. It is only thereafter that the Rules enjoined that assigned lands are heritable but not transferable. This court in ***Shyam Sunder*** (4 supra) held that the condition of non-alienability was incorporated in assignments made subsequent to 25.7.1958 and that no such condition may be

presumed to have been attached to assignments made prior to 25.7.1958.

In the light of the above precedents, the authorities implementing the provisions of the 1977 Act must record a finding that there was an assignment by the Government to a landless poor person under the Rules for the time being in force with a condition prohibiting alienation; and that such "assigned land" was alienated by such assignee, in contravention of Sec. 3 of the 1977 Act.

The proceedings under the 1977 Act are in the nature of civil proceedings. The conclusion that the land in question is assigned land may also be arrived at by a compelling inference preponerating from the circumstantial evidence on record. If the assignment in question is under certain Rules for the time being in force (within the meaning of this clause as employed in Sec. 2(1) of the 1977 Act); if such Rules (under which the assignment is made) enjoin a prohibition on alienation; and such statutory prohibition was in operation on the actual date of assignment, it might perhaps be an indicator justifying an inference that the land in question is an "assigned land". For such a presumption to be legitimately drawn, the respondents must establish the date of assignment and the contemporaneous state of the Rules under which assignment was made, to legitimize the conclusion that the Rules did prohibit alienation as on the date of assignment. All these are essentially questions of facts and must first be put to the person aggrieved so as to afford him a reasonable opportunity to explain or defend his possession and ownership of the land in question, a valuable property right. A reasonable opportunity is that which informs a respondent to a show cause notice of the facts that are asserted against him or his interest.

The show cause notice dated 16.2.2002 and the final order dated 16.5.2002 come nowhere near this forensic discipline expected of a *quasi judicial* Tribunal. A careless and negligent quasi judicial exercise cannot be overlooked on the ground that the

authority exercising it was a Mandal Revenue Officer-cum-Deputy Collector. The contention urged on behalf of the official respondents by the learned Special Government Pleader Mr. A. Satya Prasad, appearing on behalf of the learned Advocate General, that no higher forensic competence could be expected of a M.R.O. than has been displayed in the order dated 16.5.2002, does not commend acceptance by this court.

On the analysis above, the order of the 1st respondent dated.16-05-2002 is illegal and without jurisdiction. The show cause notice issued by the 1st respondent dated.16-02-2002 is itself invalid being a mockery of procedural fairness. In the order dated.16-05-2002, the 1st respondent jumped to the conclusion that the land is assigned land without bringing on record, considering or analyzing the relevant facts; as to the date of the assignment and whether the deed of assignment (in favour of the vendors of the petitioners) contained a prohibition against alienation. The date of the deed of assignment is a critical fact, since there is a clear distinction in the statutory guidelines for the assignment under the 1950 Rules as originally enacted (prior to their amendment by the revised amendment policy issued in G.O.Ms.No.1046 Revenue dated.25-07-1958); and after the revised policy. In the circumstances the date of the assignment in favour of the petitioners' vendors and the terms and conditions incorporated in the deed of assignment [particularly if the assignment deed was prior to the amendment of the 1950 Rules (by the revised assignment policy introduced in G.O.Ms.No.1046)], must be ascertained and recorded by the 1st respondent with the requisite degree of substantive and procedural discipline, since these constitute findings on jurisdictional facts which determine the jurisdiction to proceed under the 1977 Act. The order of the 1st respondent dated.16-05-2002 fails to measure up to this discipline even approximately and cannot therefore be sustained. The

respondent Nos.2,3 and 4 in the appellate and revisional orders dated.28-10-2002, 27-09-2003 and 16-06-2005 respectively merely parroted and replicated the erroneous and speculative conclusions of the 1st respondent. The appellate and the revisional orders; of the 2nd respondent dated.28-10-2002; of the 3rd respondent dated.27-09-2006 and of the 4th respondent dated.16-06-2005 cannot therefore be sustained.

The 4th respondent in the revisonal order dated.16-06-2005 in R.P.Nos.114 and 115 of 2004 (preferred by the petitioners), referred to a decision of the Supreme Court in ***Government of Andhra Pradesh and others Vs. Gudepu Sailoo and others([9]) (Sailoo)*** to justify a conclusion that both under the 1950 Rules (as originally made) as well as the revised assignment policy published in 1958, alienation of assigned lands was prohibited. On this conclusion the petitioners' revisions were dismissed and the orders of the primary and appellate authorities' confirmed.

In ***Sailoo*** (supra) the Supreme Court was considering a fact situation in which each of the respondents were allotted Government land on 20-10-1961 (after the revised assignment policy of 1958). The assignment was expressly subject to a condition prohibiting alienation without the prior sanction of the Tahasildar. The assignees on 14-08-1991 executed a power of attorney in favour of another which included the power to sell the assigned land. The holder of the power, on the basis of the authority obtained a memo dated.23-09-1992 from the Mandal Revenue Officer to the effect that the sale of the land was not hit by the provisions of the 1977 Act. Meanwhile, another Government department sent a requisition to the State government for acquisition of the land in the same village (Machirevula village) for setting up a Police Academy and other infrastructure. While so, irregularities in the initial assignment of 1961 were noticed and a show cause notice issued to the respondent in March-1994 by the

Revenue Divisional Officer. The respondents challenged the show cause notice in a writ petition (W.P.No. 9106 of 1994). The writ petition was dismissed on the ground that it was a mere show cause notice. Possession of the respondents till the final disposal of the executive proceedings was however protected. The District Revenue Officer thereupon and by the order dated.15-09-1994 held that there was no irregularity in the assignment of lands and that the respondents were in possession of the assigned lands pursuant to a certificate granted to them in Form-"G" dated.21-10-1961. Thereafter, the District Collector by the order dated.31-01-1995 suspended the operation of the earlier order dated.15-09-1994 passed by the District Revenue Officer. The respondents then challenged the order of the District Collector dated.31-01-1995 in a writ petition. During the pendency of this writ petition, the District Collector addressed the Government on 31-07-1995 to ratify his action as per his order dated 31.1.1995. On 21-04-1996 the State Government ratified the Collector's order dated.03-01-1995 and directed him to proceed with the enquiry and pass a final order. The order of the Government dated.24-01-1996 was challenged by the respondents in another writ petition. A learned single Judge of this Court allowed both the writ petitions (one challenging the order of the Collector dated.3-1-1995 and the other the order of the Government dated.24-01-1996). The State thereupon preferred two appeals. The Division Bench dismissed one of the appeals by confirming the order of the learned single Judge, which took the position that the assignment of the lands in favour of the respondents about 30 years ago should not be cancelled. The Supreme Court disagreed with the concurrent views of the High Court. The Supreme Court held that since a Mandamus was issued to the District Collector, Ranga Reddy (in W.P.No.9106 of 1994) to hear and dispose of the explanation of the respondents, the District Revenue Officer had no jurisdiction to consider the matter, in violation of the directions of the High Court. As the explanation to

the show cause notice had to be submitted by the respondents to the District Collector and he alone had to consider and take a final decision on the matter, the Supreme Court in **Sailoo (supra)** reasoned that the action initiated by the District Collector and the ratification of his order by the State Government should have been allowed to take a final shape instead of being challenged at the interlocutory stage by the respondents. The Supreme Court disposed of the appeal directing the District Collector to complete the proceedings, initiated by him by the order dated 03-01-1995 as ratified by the Government on 24-01-1996. It was during the course of such a process that the Supreme Court considered the factual status of the Laoni Rules, the revised assignment policy of 1958 and the language of Form-"G". In Para.6 of **Sailoo** the Supreme Court observed:

> *" thus, under the original Laoni Rules, 1950 as also under the Revised Policy published in 1958, the alienation of the assigned lands was prohibited. While under the Laoni Rules,1950, the alienation or transfer without the previous sanction of the Collector was prohibited under the Revised Policy, it was clearly provided that though the assigned lands would be heritable, they would not be transferred."*

On behalf of the respondent-State a Xerox copy of the 1950 Rules was produced by Sri A.Satya Prasad, the learned Special Government Pleader, for the perusal of this Court. From the scheme of 1950, Rules made in G.O.Ms.No.62, Revenue dt 16-11-1950, it is seen that the substance, procedure and guidelines for assignment of Government lands is the subject matter of the 1950 Rules. The 1950 Rules contemplate two broad methods for assignment of Government lands. One is by sale after due notification in the locality [by the procedure set out in Rule.9, including by way of auction in which case permission for occupation is granted in Form-"G", prescribed in Rule.9(g)]. The other method is called "Special Laoni" whereby in respect of landless persons, agriculturist and Backward Classes who do not have sufficient means to purchase the land either at the ordinary Laoni Auctions or

otherwise, land may be assigned biannually by following a Special Laoni procedure spelt out in Rules.15 to 23 of the 1953 Rules.

Form-"G" in the 1950 rules has (before its amendment by the revised policy of 1958) as made available to this court reads thus:

" FORM-G

Written permission to occupy land (to be given by the Tahsildar under the Laoni Rules)

Permission is hereby given to ..... inhabitant of ..... in the Tahsil of District ..... to occupy Survey of Number in the village of ..... in the Taluq of ..... in ..... District.

(Name of the Party) ..... is to pay ..... amount per year from ..... for the land granted for occupation under this permit as assessment.

If, after the phodi work is completed, the area and assessment are both fixed by the Department of Land Records (Survey and Settlement) ..... is bound to pay the assessment so fixed, but this change will take effect only from the year following that in which such change has been made as a result of the completion of phodi work by the Department of Land Records.

(In the case of land granted as not transferable) he ..... the grantee is not empowered to transfer the occupancy without the sanction previously obtained from the Collector.

This permission to occupy shall not confer the right to mine on the land or collect minerals therefrom.

Place: (Seal)

Date: Tahsildar "

The assignment made in the format of Form-"G" is an assignment made under the ordinary Laoni Rules and by the method of auction as specified in Rule.9(g). The body of the Rules do not spell out a prohibition of alienation. Form."G" to the extent relevant and material to this case reads:

> "(In the case of land granted as not transferable) he ..... the grantee is not empowered to transfer the occupancy without the sanction previously obtained from the Collector".

From the text of Form-G, the inference is compelling that prior to the revised assignment policy (1958), under the unamended 1950 Rules, the assignment could be with or without a condition as to prohibition of alienation. If the assignment specified a prohibition, then and then alone must a grantee not transfer the occupancy without the previous sanction from the Collector.

This Court is not aware of which format of Form-"G" fell for the consideration of the Supreme Court in ***Sailoo***. Since the Supreme Court had disposed of the Civil Appeal directing the Collector to

complete the proceedings, its observation regarding the content of Form-G under the original 1950 Rules (prior to amendment by the Revised Assignment Policy of 1958) is perhaps based on the factual status of Form-'G' (as placed before the Supreme Court) which does not amount to a *ratio decidendi* or the law declared within the meaning of the expression, in Article.141 of the Constitution. Though even the observations of the Supreme Court are entitled to great deference as they are from the Apex Court of the Republic, this Court is not relieved of its obligation to consider, the factual status of the statutory rules and a statutory form (Form-"G"). Both parties herein are agreed that the Form-'G', extracted above is the Form that was in operation earlier and it is contended that the same Form is still in use.

This Court must also record the wholly unsatisfactory position obtaining, of having to rely on unofficial publications of Acts and Rules. Even the learned Special Government Pleader has placed for the perusal of the court, a Xerox copy of the 1950 Rules, picked up from a private publication. The Form-"G" under Rule.9(g) of the Laoni Rules 1950, prior to the Revised Assignment Policy of 1958, as placed for the perusal of this Court by the learned Special Government Pleader does not incorporate a specific prohibition of alienation.

On the above factual analysis it cannot be legitimately concluded that a prohibition of alienation was incorporated in every assignment made, under the 1950 Rules, prior to the revised assignment policy (in 1958).

From the text and tenor of the relevant portion of Form-G, the conclusion is compelling that neither the provisions of the 1950 Rules nor Form-G per se prohibit alienation of assigned lands. In a specific assignment it is possible that there is impregnated (in the deed of assignment) a prohibition of alienation. In the case of such an assignment (containing a prohibition of alienation), the provisions of Form-G come into operation viz., the land having been

granted (assigned) prohibiting transfer, within the terms of the assignment, the grantee would be disabled to transfer his occupancy without the previous sanction obtained from the Collector. Such a state of documentation is quite distinct from a generic non-exclusionary and wholesome prohibition of alienation.

In this case there is nothing on record, either in the show cause notice dated 16.2.2002; the order of the primary authority dated 16.5.2002; nor the appellate and revisional orders which establish, on the basis of any evidence whatsoever, that the deed of assignment in favour of the petitioners, either after the revised assignment policy of 1958 or prior thereto contained a prohibition of alienation. There is therefore no legal basis to conclude that the land in question is 'assigned land' as the expression has been defined in Sec.2(1) of the 1977 Act.

The counter affidavit of the 5th respondent states that in G.O. Ms. No. 86 Industries & Commerce, dated 20.2.2002 orders were issued by the State for establishment of a Financial District in Hyderabad in Nanakramguda village, to be developed by the State to provide lands for financial, blanking, insurance, stock market agencies and the like. The answering respondent requested the District Collector, Ranga Reddy, vide letter dated 22.9.2001 to make available Government and assigned lands in occupation of the assignees in Sy.Nos. 113, 134 and 115 in various sectors of the village for development of the Financial District. Pursuant to this request the District Collector, Ranga Reddy by his letter dated 23.11.2001 issued instructions for handing over of Government land in an extent of Ac.106.26 gts, in Nanakramguda village to the Corporation, in compliance whereof possession of the Government land in the village was handed over on 27.11.2001 and 1.12.2001 to the Corporation for development of the financial project. The 5th respondent also states that the Corporation deposited the specified amounts with the District Collector, Ranga Reddy for arranging payment of ex-gratia to the assignees whose lands were resumed

for the public purpose i.e, development of Financial District. From this counter it is apparent that even before the final order of the 1st respondent primary authority (dated 16.5.2005) land was handed over (including the lands of the petitioners), to the 5th respondent. Whether the order of resumption has been hastily and incompetently drawn catalyzed by the need to deliver on the promise made to the 5th respondent Corporation (to allot land to it) is not clear. What is certainly clear and demonstrable is that the order of the 1st respondent dated 16.5.2005 is an exercise in irrelevance and must therefore perish.

On behalf of the 6th respondent a counter affidavit has been filed. According to the 6th respondent, the 5th respondent on authorization by the 4th respondent allotted Ac.30.5 gts of land in Sy. Nos. 115/1, 115/16 to 115/21, 115/27, 115/28 and 130 of Nanakramguda village to it for its operations. Consequent on the allotment, other formalities for regularizing its ownership and possession of the allotted land were pursued between respondents 4,5 and 6. Respondent No.4 is stated to have executed a conveyance deed dated 25.6.2004 confirming conveyance in favour of the 6th respondent. The 6th respondent states that pursuant to the conveyance in its favour the answering respondent initiated the necessary civil works for development of its campus. The 6th respondent pleads that granting relief to the petitioner or invalidation of the orders of the primary, appellate and revisional authorities (resuming the petitioners' land in favour of the State) would interdict the progress of its activities in the land assigned to it by the 1st respondent and would also impose significant costs, delays and other expenses incurred in connection with the development of its Campus.

In the light of the analysis above, in the considered view of this court, the show cause notice dated 16.2.2002 and the primary

order of the 1st respondent dated 16.5.2002, are patently illegal and incompetent. The show cause notice is illegal since it is not a show cause notice, except in its name. It conveys no information to its recipient on which cause is to be shown. It affords no opportunity whatsoever to show cause. The show cause notice dated 16.2.2002 issued by the 1st respondent is therefore quashed. De hors the infirmity of proceeding on such an incompetent show cause notice, the primary order of the 1st respondent dated 16.5.2002 is also invalid for the reason that it attempts an ethereal leap to a vacuous conclusion that the possession of the petitioners (of the lands in question) is in transgression of the prohibitions contained in the 1977 Act. This conclusion is based on no evidence whatsoever. No deed of assignment was examined. There is no rational and legitimate finding or conclusion recorded that the land in the possession of the petitioners is an 'assigned land', as the expression is defined in Sec.2(1) of the 1977 Act. The order of the 1st respondent dated 16.5.2002 declaring the possession of the petitioners of the land in question as in violation of the provisions of Sec.3 of the 1977 Act, is therefore invalid and inoperative.

Since the primary order of the 1st respondent dated 16.5.2002 is invalid, it must logically follow that the appellate and revisional orders of the respondents 2 to 4 dated 28.10.2002, 27.9.2003 and 16.6.2005 respectively must also perish, also as the appellate and revisional orders are mere reiteration of the primary order and suffer the same incurable defect.

As a consequence of the aforementioned conclusion, the resumption of the petitioners' lands in favour of the State by the order of the 1st respondent dated 16.5.2002 as confirmed in the appeal and revisions, by the respondents 2 to 4 must normally be restored and the petitioners put in the same position as they were prior to the show cause notice dated 16.2.2002. However, factual developments have occurred viz., allotment of the land by the 5th

respondent to the 6th respondent whereat the 6th respondent has established, though not perhaps in the very land of the petitioners structures and appurtenances to its campus. In view of the eventual liberty that this court affords to the official respondents, in the considered view of this court, for a period *status quo* must needs be maintained, in the public interest.

Since the show cause notice dated 16.2.2002 of the 1st respondent and the consequent and subsequent orders of the respondents 1 to 4 are declared invalid and inoperative, this court considers it appropriate to preserve liberty in the 1st respondent to issue show causes notice afresh, should it so desire, to the petitioners. The show cause notices must afford a fair and reasonable opportunity duly sensitizing the petitioners as to the facts and allegations they are required to meet, duly sensitive to the fact that the 1st respondent is performing a *quasi judicial* determinative jurisdiction in respective of valuable rights of property of the petitioners and in due recognition of the fact that the 1st respondent is a Tribunal of a limited jurisdiction, and is therefore required to come to a rational conclusion on the basis of probative evidence – first as to the existence of the jurisdictional fact which clothes the 1st respondent with the jurisdiction to exercise powers under the provisions of the 1977 Act. The 1st respondent should therefore both in the show cause notice and in the eventual order he passess, record a clear and cogent conclusion based on probative evidence, (A) that the land is an 'assigned land' and (B) that the possession of the petitioners in the teeth of the prohibition contained in the 1977 Act.

This court is constrained to record the above caveat as to the ingredients for the exercise of jurisdiction by the 1st respondent, on account of the submissions made by the State that no higher forensic discipline could be expected from the 1st respondent. The quality of determination depends on the quality of subject matter to

be decided and is not dependent upon the capacity of the person determining. In the vastness of its manpower resources, it is the duty of the State to identify an officer who can measure up to the requirements of deciding issues that arise under the provisions of the 1977 Act.

On an overall balancing of the competing rights, obligations and public interest concerns, this Court directs that *status quo* as obtaining today shall be maintained with regard to possession of the land in an extent of Ac.5.00 in Sy.No.115/16 and Ac.5.00 in Sy.No. 115/29 of Nanakramguda village, for a period of six months. If by the end of the aforesaid period, the current *de jure* entitlement of the petitioners to possession and enjoyment of the property is not disturbed by any formal order passed by due proceedings under the 1977 Act, the petitioners shall be entitled to restoration of the possession of the aforesaid land and the respondents, jointly and severally shall restore to the petitioners' possession of the land. Such redelivery possession shall include restoration of the physical possession of the lands in question. During the above period, the 6th respondent shall not make any alterations, modifications in relation to the property and shall otherwise be disentitled to disturb the *status quo,* of the lands in question.

The writ petitions are allowed as above. No order as to costs.

Dated: 23.11.2006 ----------
Pvsn/Tsnr Justice G.Raghuram

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[1] 1991 Supple(2) SCC 228
[2] AIR 1954 SC 440
[3] (1853) 9 EX.111
[4] (1888) 22 QBD 313
[5] 1996 (4) ALD 572 (D.B)
[6] 1997 (4) ALD 294
[7] 2000 (2) ALD 433

[8] 2001 (5) ALD 766

[9] AIR 2000 SC 2297